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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

DEAN ISAACSON, Plaintiff and Respondent, v. GHANSHYAM DAS POKAL, Defendant and Appellant.	B236543 (Los Angeles County Super. Ct. No. LC085053)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard A. Adler, Judge. Affirmed.

Huron Law Group, Jeffrey G. Huron, Cory L. Webster and Phu Nguyen for Defendant and Appellant.

Law Offices of Hemar Rousso & Heald and Jeannine Del Monte Kowal for Plaintiff and Respondent.

INTRODUCTION

Defendant and Appellant Ghanshyam Das Pokal (Pokal) appeals from a judgment against him. After a bench trial, the trial judge found that, based upon an oral agreement, Plaintiff and Respondent Dean Isaacson (Isaacson) loaned money for the benefit of Pokal and Gretzel Hunt (Hunt). The judge held Pokal and Hunt jointly responsible for repayment of an amount each separately owed on the loan.

According to Pokal, the trial judge improperly concluded that Isaacson loaned money for Pokal's benefit, and that any related prior oral agreement was not superseded by the Note and Deed of Trust between Isaacson and Hunt; and, the judge abused his discretion in rejecting Pokal's affirmative defense of unclean hands. We affirm.

FACTUAL SUMMARY

Pokal and Hunt, as partners, invested in real property in Riverside County (Riverside Property). Pokal and Hunt were sued about that property. Pokal and Hunt resolved the Riverside litigation by entering into a written settlement, whereby they agreed jointly to pay $1,015,000 while retaining that property. The settlement further provided that, if Pokal and Hunt did not pay that sum by a certain date, a judgment would be entered against each of them in that litigation.

In August 2008, lacking enough funds with the payment deadline approaching, Pokal and Hunt turned to Isaacson. During several telephone conversations and exchange of emails, Isaacson, Hunt, Pokal, Geeta Pokal (Pokal's wife), and John Bowers (Pokal's attorney) discussed many subjects and options, including a loan of $600,000 from Isaacson to effectuate that litigation's settlement. Moreover, Pokal and Hunt were to form an unidentified limited liability corporation (LLC), which would be responsible for repaying the loan and would execute a note and deed of trust, secured by the Riverside Property. In reliance upon oral representations by Pokal and others, Isaacson wire-transferred $600,000 directly to the opposing parties in that litigation.

Isaacson turned to memorializing the sizable money transfer. While Hunt was somewhat helpful, Pokal refused to cooperate with respect to the LLC and to sign any written document, note or otherwise, in favor of Isaacson. Isaacson and Hunt, as "an

unmarried woman," entered into the Note and Deed of Trust. Those two documents refer to each other, with no reference to any other agreement, oral or written, or any prior negotiations; there was no integration clause in either of those two documents.

In April 2009, Isaacson filed his initial verified complaint in this action against Pokal and Hunt, claiming that he had an oral $600,000 unsecured loan agreement with those two, which had not been repaid. Over a year later, Isaacson filed a First Amended Complaint, which was verified and asserted the LLC was obligated to repay the unsecured loan, albeit Hunt had previously paid him $70,000. In October 2010, with similar allegations, he filed a verified Second Amended Complaint.

In this lawsuit, Pokal filed a cross-complaint against Hunt alone, asserting that he and she were partners with respect to the Riverside Property but Hunt had failed to document properly their partnership and she had improperly diverted funds. Pokal took her default. At the prove-up hearing, the trial judge ordered that Pokal should be the sole owner of that property and also awarded him monetary damages. Pokal thereafter recorded a deed of trust evidencing his sole ownership with respect to that property. On January 4, 2012, this court affirmed the trial judge's denial of Hunt's motion to set aside the default.

In May 2011, a three-day bench trial occurred, involving Isaacson as the plaintiff and Pokal as the sole defendant. During the trial, with the judge's approval, Isaacson filed the third amended complaint, with causes of action for breach of contract, promissory fraud, and money paid. Only Isaacson and Bowers testified at the trial.

Among other things, Isaacson testified about the telephone conferences and emails, which ultimately resulted in his loaning $600,000 for the benefit of Pokal and Hunt in order to settle the Riverside litigation. Isaacson remarked that Hunt and Pokal agreed to form a LLC, with it providing security of the Riverside Property for repayment of that loan, but no LLC was formed. He asked Hunt for money and she provided some funds in repayment; the trial judge pressed Isaacson with respect to his prior statements, several under oath, about the amounts of Hunt's repayments and his inconsistent

positions in that regard. Isaacson added that he did not ask Pokal for any money because "[i]t wasn't his responsibility. He was supposed to sign a partnership agreement."

During cross examination in response to inquiry by the trial judge, Isaacson disclosed Hunt had executed the Note and Deed of Trust. Isaacson opined those documents were "worthless" because Pokal and the LLC did not sign; hence, he did not record those documents or advise his counsel or anyone else of their existence.

In July 2011, the trial judge ruled in favor of Isaacson and against Pokal (and Hunt). The judge's "Final Decision" made findings, including:

- Pokal and Hunt requested $600,000 from Isaacson. In order to settle the Riverside litigation, Pokal and his wife asked Isaacson to "come up with as much [money] as I could come up with" and added "Please loan us this money. We have nothing else. We have nowhere else to go." Isaacson finally agreed to loan $600,000, wire-transferring that sum to opposing counsel in the Riverside litigation.
- Pokal had "an ownership interest" in the Riverside Property at the time of the loan. The "$600,000 loan was in furtherance of the [Hunt/Pokal] partnership with the knowledge and agreement of both partners."
- When that loan was made, Pokal and Hunt were partners with respect to the Riverside Property.
- It was "remarkable" the first reference at trial to the Note and Deed of Trust did not occur until Isaacson's cross-examination, and then in response to a question by the judge. Before then, Isaacson did not inform his own counsel or Pokal about the Note and Deed of Trust.
- Isaacson at trial remarked the Note and Deed of Trust were "worthless," because only Hunt as an individual signed; Isaacson advanced no legal theory or law to support this assertion. The judge opined that Isaacson could have asserted, for example, that Hunt, as a partner, could have lawfully bound the partnership.

- The absence of Pokal's name on the Note and Deed of Trust reflected his "refusal to be bound," and was "not an indication [Pokal's] obligation ha[d] been superseded by a written agreement between other parties."
- Isaacson was not obligated to record the Note and Deed of Trust.
- If Isaacson had recorded the Note and Deed of Trust, this would have established a lien on the Riverside Property. Isaacson's failure to record bestowed a benefit upon Pokal and a detriment to himself.
- The Note and Deed of Trust are not integrated. Those documents "do not contain an integration clause. Therefore, the parties have not expressly agreed to disregard their oral agreement [between Isaacson and Pokal]." Further, "Pokal is not referenced anywhere in [those] documents."
- The Note and Deed of Trust relate to the "same transaction" as the oral agreement, but the former "clearly does not include Pokal. The note is therefore not between identical parties to the original loan transaction."
- Pokal was not entitled to the benefit of an unclean hands or of a failure to mitigate affirmative defense.
- While awarding $355,000 against Hunt, the trial judge rejected awarding that sum against Pokal too, as the latter was not bound by any interest rate. Instead, the judge found Pokal responsible for $228,798.14, plus prejudgment interest, as his "oral agreement [with Isaacson] was breached . . . .

STANDARD OF REVIEW AND ISSUES TO RESOLVE

"In general, in reviewing a judgment based upon a statement of decision following a bench trial, 'any conflict in the evidence or reasonable inferences to be drawn from the facts will be resolved in support of the determination of the trial court decision.' " (*Estate of Young* (2008) 160 Cal.App.4th 62, 75-76 (*Young*).) "We may not reweigh the evidence and are bound by the trial court's credibility determinations. [Citations.] Moreover, findings of fact are liberally construed to support the judgment." (*Id.* at p. 76.)

As framed by Pokal's Brief of Appellant, our review centers upon the following two issues:

1. Were the Note and Deed of Trust integrated, thus precluding enforcement of the oral loan agreement involving Isaacson and Pokal?
2. Did the trial judge abuse his discretion in denying Pokal's unclean hands defense?

DISCUSSION

1. *The Note and Deed of Trust Are Not Integrated.*

Pokal advanced below and sets forth herein several arguments. Some relate to factual issues. For instance, Pokal's Reply Brief asserts that Isaacson utilized "false testimony" and his "inconsistencies . . . suggest that the oral agreement was fabricated." The trial judge, though, rejected those assertions. For example, that judge specifically found Isaacson's "$600,000 loan was in furtherance of the partnership with the knowledge and agreement of both [Pokal and Hunt]," Isaacson's wire-transfer of that sum "was for the benefit of both [Pokal and Hunt] and made upon their joint request," and therefore Pokal and Hunt were each "jointly responsible for repayment of the loan." Substantial evidence at trial supports these and similar findings by the trial judge; consequently, under *Young*, we are constrained by those findings. In any event, Pokal rejoins, the judge improperly considered extrinsic evidence (e.g., the oral agreement involving Isaacson and Pokal) which he should have found inadmissible by reason of the parol evidence rule. The key, as Pokal concedes, is whether the Note and Deed of Trust are integrated.

This court in *Banco Do Brasil, S.A. v. Latian, Inc.* (1991) 234 Cal.App.3d 973, 1001 (*Banco Do Brasil*) (citations omitted) declared: "The resolution of the issue of whether the [parol evidence] rule applies so as to exclude any collateral oral agreement is

one of law to be determined by the court. [Citations.] We are therefore not bound by the trial court's determination . . . . We will consider and resolve the issue de novo."[1]

Code of Civil Procedure section 1856(a) provides: "Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement." Application of the parol evidence rule " 'involves a two-part analysis: 1) was the writing intended to be an integration, i.e., a complete and final expression of the parties' agreement, precluding any evidence of collateral agreements [citation]; and 2) is the agreement susceptible of the meaning contended for by the party offering the evidence?' " (*Banco Do Brasil*, *supra*, 234 Cal.App.3d at p. 1001.)

In determining whether a writing was intended to be an integration, the " 'instrument itself may help to resolve that issue. It may state, for example, that "there are no previous understandings or agreements not contained in the writing," and thus express the parties' "intention to nullify antecedent understandings or agreements." ' " (*Banco Do Brasil*, *supra*, 234 Cal.App.3d at p. 1001.) As the trial judge noted, the Note and Deed of Trust contain no such language, nor is there any reference to Pokal or any oral agreement. If the Note and Deed of Trust in effect released Pokal from the oral agreement, why would it not contain such a release or an integration clause?

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[1] Isaacson cites *Heller v. Pillsbury Madison & Sutro* (1996) 50 Cal.App.4th 1367, for the proposition that substantial evidence is the proper standard of review. That court stated that standard was appropriate when the trial judge determined the issue of integration based upon extrinsic evidence of intent. (*Id.* at p. 1382, fn. 5.) This proposition is supported by other case law (see, e.g., *Mobil Oil Corp. v. Handley* (1978) 76 Cal.App.3d 956, 961 ["The trial court's ultimate conclusion on the issue of integration is entitled to the same deference on appeal as any other ruling of the court on an issue of fact."].) Here, it is unclear whether the trial judge resolved the integration issue as a matter of law or based upon extrinsic evidence. However, because Pokal's integration claim fails regardless of the standard of review, we need not resolve that issue.

A key issue, in the words of the trial judge, is whether Isaacson's $600,000 "was a personal loan exclusively to Hunt or whether the parties intended to bind both Hunt and Pokal as partners . . . ." The Note and Deed of Trust memorialize a loan only between Hunt individually and Isaacson. The oral agreement in this appeal involves only Pokal and Isaacson. Obviously, then, that agreement and the Note and Deed of Trust were not between the same parties. Pokal proclaims, though, that "Isaacson's extrinsic evidence directly contradicts the written agreement [the Note and Deed of Trust]." But it is illogical to conclude that a writing between Hunt and Isaacson nullifies an oral agreement involving Pokal and Isaacson. (Cf., Civ. Code, §1642 ["[s]everal contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together."].)

The Note and Deed of Trust are entitled to significant weight. (See Civ. Code, § 1639 ["When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible . . . ."].) Yet, that is not dispositive. "[C]ourts may consider all the surrounding circumstances, including prior negotiations, and may examine the collateral agreement itself to ascertain if it was meant to be part of the bargain. [Citations.] However, the collateral agreement will be looked to only insofar as it does not directly contradict the express terms of the writing." (*Software Design & Application, Ltd. v. Price Waterhouse* (1996) 49 Cal.App.4th 464, 470 (*Software*).)

This court therefore looks at the record. Its consideration, though, leads to the same conclusion. Specifically, the trial judge found Isaacson loaned and wire-transferred $600,000 for the benefit of Pokal and Hunt in reliance upon representations made by both during a series of telephone calls and emails involving Isaacson, Hunt, Bowers and Pokal and his wife. It was represented to Isaacson that: (1) an LLC would be formed; (2) the LLC would repay the loan; and (3) the LLC would execute a note and deed of trust, secured by the Riverside Property, in favor of Isaacson.

After that wire-transfer of $600,000, Pokal refused to form the LLC and to sign any documents. Substantial evidence supports the trial judge's conclusion that the absence of Pokal's name from the Note and Deed of Trust did not negate the oral agreement. Moreover, absent direct testimony at trial of such an intention (and there was none), the sizable sum paid indicates Isaacson did not intend to release Pokal; in other words, why would Isaacson transfer $600,000 for the benefit of Hunt and Pokal but then later just hold the former liable?

To settle the Riverside litigation, Pokal contends he actually owed just $415,000, which he promptly paid after taking out a second mortgage on his home. Therefore, Pokal continues, Hunt alone had to satisfy the $600,000 loaned by Isaacson. Yet, the trial judge found otherwise, and substantial evidence supports that finding. Thus, one more contention by Pokal falls by reason of the standard of review articulated above in *Young, supra,* 160 Cal.App.4th at pages 75-76.

The trial judge found the Note and Deed of Trust were not integrated. Pokal complains that finding was based on Isaacson's "failure to tell the truth" and "self-interest" testimony. However, after cross-examining the direct testimony of Isaacson and Bowers, Pokal's defense at trial offered only Isaacson's additional testimony. As Isaacson emphasized in his Respondent's Brief,[2] neither Pokal or his wife took the stand to refute Isaacson or make any offer of proof. Moreover, Pokal's pre-trial discovery was quite truncated; that is, one request to produce and the brief deposition of Isaacson, taken after the discovery cut-off in this lawsuit due to the trial judge's order, which related only to certain of his contacts with Hunt. Did Pokal's lack of discovery contribute to the "surprises" at trial about which he now complains? In any event, after hearing testimony from Isaacson and Bowers and evaluating the admitted exhibits, the trial judge found that evidence credible and ruled in Isaacson's favor. Again, substantial evidence supports the ruling.

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[2] Isaacson speculates that Pokal did not testify because of his fear of perjuring himself, especially in light of his prior denial of knowing Isaacson or having any "interest in him advancing any money on my behalf."

Pokal complains about Isaacson's concealment of the Note and Deed of Trust, permitting him to offer "the oral agreement 'as a new, additional and completely different agreement.' " The trial judge extensively quizzed Isaacson about that alleged concealment, but eventually seemed to accept Isaacson's "worthless" and similar explanations, and in any event found no such concealment. We will not as a matter of law accept this concealment complaint by Pokal. Once more, in light of *Young*, we uphold the trial judge's conclusion.

In a similar vein, Pokal highlights inconsistent statements by Isaacson, often under oath, e.g., about how much and when did Hunt make payments to him. Isaacson responded with his versions, occasionally acknowledging his errors. The trial judge questioned Isaacson's credibility in various areas, even going so far as to say that he "distrusts [Isaacson's] testimony concerning the amount actually repaid by Hunt." Still, the judge ultimately ruled in Isaacson's favor and against Pokal, while concluding that Hunt owed a larger sum than Pokal. This latter ruling, for example, reflected the judge's careful evaluation of the various monetary claims and payments.

Pokal cites *Software Design, supra,* 49 Cal.App.4th 464. There, Patrick McDonald encouraged Mand Chatterjee to invest in Embrace System Corp. Chatterjee insisted upon an audit of Embrace, which had to be conducted by a large accounting firm. Embrace entered into written audit engagement contracts with Price Waterhouse for such services. After issuance of audit reports, Chatterjee and SDA invested substantial sums with Embrace. Serious financial problems surfaced. Chatterjee and SDA sued Price Waterhouse, which moved for summary judgment. Chatterjee and SDA responded with McDonald's declaration stating he had an oral agreement with Price Waterhouse to the effect that actual and potential investors with Embrace would be third party beneficiaries of those contracts. The trial court granted summary judgment, declining to consider McDonald's declaration as it "could not alter or amend the terms of the written audit engagement contracts . . . ." (*Id.* at p. 468.)

In affirming, the appellate court found "no ambiguity as to who the parties are, or who the client of [Price Waterhouse] is." (*Software Design, supra,* 49 Cal.App.4th at p. 470.) Pokal embraces this language because the Note and Deed of Trust are similarly unambiguous as to the identity of the parties, and Pokal is not one. However, as the written audit engagement contracts were the center of the controversy in *Software Design*, the plaintiffs' claims failed because investors like Chatterjee were never a party to those contracts. Here, the center of the controversy is the oral agreement involving Isaacson and Pokal. Pokal's omission from the Note and Deed of Trust does not, as the trial judge reasoned, preclude enforcement of that agreement.

According to Pokal, the oral agreement should not be considered because it contradicts the express terms of the Note and Deed of Trust. This argument is based on language from *Banco Do Brasil* where this court stated, " 'it cannot reasonably be presumed that the parties intended to integrate two directly contradictory terms.' " (*Banco Do Brasil, supra,* 234 Cal.App.3d at p. 1002.) Yet, the trial judge found that Pokal's absence was due to his refusal to be bound by the Note and Deed of Trust. Consequently, those documents did not include Pokal's oral agreement. "[W]hen parties have not incorporated into an instrument all of the terms of their contract, evidence is admissible to prove the existence of a separate oral agreement as to any matter on which the document itself is silent and which is not inconsistent with its terms." (*McCreary v. Mercury Lumber Distributors* (1954) 124 Cal.App.2d 477, 484.) Because the Note and Deed of Trust have no reference to any oral agreement, its terms are not inconsistent.

Pokal claims that, even if the Note and Deed of Trust "were not totally integrated," those documents were "at least partially integrated as to the identity of the parties to the contract." In making this claim, Pokal cites one decision, *Esbensen v. Userware Internat., Inc.* (1992) 11 Cal.App.4th 631, a wrongful termination dispute between an employer and several of its officers versus a former employee; that dispute concerned no third party. In any event, the dispute here relates to the Note and Deed of Trust involving Isaacson and Hunt (the sole two parties to the contract) in contrast to the oral agreement

in question involving Isaacson and Pokal. Hence, Pokal's "partial integration" claim is not persuasive.

The foregoing demonstrates that regardless of the approach—whether we examine the Note and Deed of Trust themselves, the surrounding circumstances, or the relation of the oral agreement to those documents—the trial judge was correct. Accordingly, evidence of the oral agreement involving Isaacson and Pokal was admissible and properly evaluated by the trial judge.

2. *The Trial Judge Properly Denied Pokal's Defense of Unclean Hands.*

The unclean hands doctrine "demands that a plaintiff act fairly in the matter for which he seeks a remedy. He must come into court with clean hands, and keep them clean, or he will be denied relief, regardless of the merits of his claim." (*Kendall-Jackson Winery, Ltd. v. Superior Court* (1999) 76 Cal.App.4th 970, 978 (*Kendall-Jackson*).) This doctrine "protects the court's, rather than the opposing party's interests." (*Ibid*.) In other words, this doctrine seeks to shield the judiciary from an abuse of the litigation process.

A three-pronged test determines "the effect to be given to the plaintiff's unclean hands conduct. Whether the particular misconduct is a bar to the alleged claim for relief depends on (1) analogous case law, (2) the nature of the misconduct, and (3) the relationship of the misconduct to the claimed injuries." (*Id.* at p. 979, quoting *Blain v. Doctor's Co.* (1990) 222 Cal.App.3d 1048, 1060.) Whether to invoke unclean hands falls within the trial court's discretion. (*Farahani v. San Diego Community College Dist.* (2009) 175 Cal.App.4th 1486, 1495.) We thus review the trial judge's denial of Pokal's unclean hands defense for an abuse of discretion. (*Dickson, Carlson & Campillo v. Pole* (2000) 83 Cal.App.4th 436, 447 (*Dickson*) ["A court's discretion to grant an equitable defense such as unclean hands is not unlimited. The court must consider the material facts affecting the equities between the parties; the failure to do so is an abuse of discretion."].)

Pokal contends that the trial judge abused his discretion, principally with respect to two distinct areas: (1) by applying the wrong legal standard, and (2) by failing to consider certain material facts. This contention focuses upon the statement in the Final

Decision that Isaacson "was not obligated by law to record" the Note and Deed of Trust. First, Pokal argues, this statement indicates the trial judge applied a standard of "illegality" rather than the proper standard of "unconscientious conduct." (See *Pond v. Insurance Co. of North America* (1984) 151 Cal.App.3d 280, 292 (*Pond*) ["violation of principles of good faith and good conscience"].) Second, this statement indicates the trial judge made a finding on only one of the three different topics which, Pokal asserted, demonstrated unclean hands: (1) Isaacson's intentional misrepresentations under oath of Hunt's payments to him, in order to obtain more money from Pokal; (2) until forced by the judge's inquiry at trial, Isaacson's concealment of the Note and Trust Deed, in order to pursue his breach of oral contract claim; and, (3) Isaacson's seeking of an attachment against Pokal for $530,000, while Isaacson had existing security (thus violating the attachment statute, Code Civ. Proc., § 483.010(b)), and he knew at most Pokal owed only $355,000.

While illegality by itself is not the proper standard and Pokal did advance those three topics at trial, the trial judge's statement does not prove Pokal's argument. For example, as to the illegality, the judge discussed the benefit to Pokal and the detriment to Isaacson resulting from the latter's failure to record the Note and Deed of Trust. For instance, with respect to those topics (and others too), the judge was active at trial, asking questions, clarifying matters and making observations; and, as observed above, he was critical of some of Isaacson's answers, even questioning his credibility.

Moreover, Pokal's argument presumes that, before promulgating the Final Decision, the trial judge did not consider all aspects of those three topics. A similar assertion was recently rejected in *Cussler v. Crusader Entertainment, LLC* (2012) 212 Cal.App.4th 356. There, the appellant contended that, as the minute order did not expressly reflect consideration of certain sources, the judge "did not analyze" them. (*Id.* at p. 367) This court disagreed with these words: "This presumption turns appellate review on its head. ' " 'A judgment or order of the lower court is *presumed correct. . . .*' " ' " [Citation.] [¶] Nothing in the record in this case indicates that the trial court did not consider [the sources]. We thus presume that the trial court did consider

such sources . . . . Accordingly, [appellant] did not meet [his] burden of showing error." (*Ibid*.)" This observation applies here too.

Alternatively, as an additional and distinct reason for approving the trial judge's conclusion, that judge did not have to consider the two areas because they are not "material facts affecting the equities between the parties." (*Dickson, supra,* 83 Cal.App.4th at p. 447) That is, they have very little, if anything, to do with Pokal's oral agreement with respect to Isaacson's loan, the key issue at trial.

"The misconduct which brings the [un]clean hands doctrine into operation must relate directly to the transaction concerning which the complaint is made, i.e., it must pertain to the very subject matter involved and affect the equitable relations between the litigants." (*Fibreboard Paper Products Corp. v. East Bay Union of Machinists* (1964) 227 Cal.App.2d 675, 728; see also *Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 846 ["[T]here must be a direct relationship between the misconduct and the claimed injuries . . . ' "so that it would be inequitable to grant [the requested] relief." ' "].) The misconduct must " ' " 'prejudicially affect . . . the rights of the person against whom the relief is sought so that it would be inequitable to grant such relief.' " ' " (*Kendall-Jackson, supra,* 76 Cal.App.4th at 979.)

Even assuming *arguendo* Isaacson intentionally concealed the existence of the Note and Deed of Trust, this does not alter the conclusion that the Note and Deed of Trust are not integrated and that Pokal's argument to the contrary cannot shield him from liability. Isaacson's alleged "unconscientious conduct" did not induce Pokal to accept the benefit of Isaacson's money, nor "prejudicially affect" Pokal's rights at trial. The same analysis applies to Pokal's contention with respect to the two other topics, attachment and Hunt's repayments.

Pokal refers us to two decisions, *Pond* and *McDougall v. O'Hara* (1954) 129 Cal.App.2d 12. The latter involved an unpaid loan between two friends. O'Hara indicated that she would extend a loan to McDougall only if it was secured by real property. After McDougall falsely represented the promissory note was the deed of trust, the loan was made. McDougall later defaulted and the lender obtained a judgment

encumbering the property. McDougall then brought an action to quiet title. (*Id.* at p. 13.) The court invoked the doctrine of unclean hands because McDougall falsely stated the promissory note was the deed of trust. (*Id.* at p. 15.)

McDougall was seeking to quiet title with respect to the same property which he falsely represented to O'Hara would be security for her loan. Again, Isaacson's alleged misconduct was not related to the circumstances surrounding his oral agreement with Pokal. For instance, Pokal has not alleged Isaacson wrongfully induced him to take his money or to prevent Pokal from repaying him. Additionally, the trial judge found Pokal willingly entered into the oral agreement, with an understanding of its terms.

Pond affirmed the granting of a summary judgment for the defendant insurer. In that successful motion, the insurer relied on its affirmative defense of unclean hands, which asserted that Pond should be barred from pursuing his malicious prosecution claim because of his failure to disclose two critical documents during the course of the underlying litigation. (*Pond, supra*, 151 Cal.App.3d at p. 291.) Pokal asserts Isaacson, like Pond, concealed key documents.

The *Pond* court, though, stressed the documents there, "if timely disclosed, may well have changed the outcome of the [underlying] indemnity action." (*Pond, supra,* 151 Cal.App.3d at p. 291.) As the trial judge found, the oral agreement was independent of the Note and Deed of Trust. As discussed above, there is no reason to believe its earlier disclosure would have affected the result at trial; for example, notwithstanding the belated acknowledgement at trial, the trial judge asked numerous questions about the Note and Deed of Trust, as well as discussing those documents extensively in his findings; he still, however, ruled against Pokal.

It is also unclear whether Isaacson deliberately concealed the existence of the Note and Deed of Trust because he frequently opined those documents were "worthless." Finally, as previously mentioned herein and as his counsel acknowledged, Pokal conducted very little pre-trial discovery; such inaction by Pokal does not amount to misconduct by Isaacson.

Pokal cites a statement in *Pond*, where that court quotes *DeGarmo v. Goldman* (1942) 19 Cal.2d 755, 765 (*DeGarmo*), for the proposition: " '*Any unconscientious conduct* upon his part which is connected with the controversy . . . .' " (*Pond, supra,* 151 Cal.App.3d at p. 291.) That, continues Pokal, means that even if the Note and Deed of Trust are different from the oral agreement they are still the same "controversy." But the *Pond* court also quoted another case for the proposition that the challenged behavior "must relate 'directly to the transaction concerning which the complaint is made.' " (*Id*. at p. 290.) Additionally, the Supreme Court in *DeGarmo* remarked it is the "conduct connected with the controversy to which he is a party . . . ." (*DeGarmo,* at p. 765.) We therefore believe the use of "controversy" in *Pond* does not alter the "relate directly" standard cited therein, and in the other case law referring to "misconduct" cited above.

Lastly, we agree with the implied finding of the trial judge that, within the meaning of the standards related to the unclean hands defense, Isaacson's challenged conduct did not violate the "interests" of the courts, nor abuse the judicial process. (*Kendall-Jackson, supra,* 76 Cal.App.4th at p. 978.) The judge was aware of Isaacson's unsuccessful effort for an attachment against Pokal, of his belated disclosure of the Note and Deed of Trust, and of his inconsistent positions regarding the amount of Hunt's indebtedness. While expressing concern about those topics and Isaacson's related credibility, the trial judge still found no unclean hands.

Consequently, all things considered, the trial judge did not abuse his discretion in rejecting the unclean hands defense.

DISPOSITION

The judgment is affirmed. Respondent Dean Isaacson to recover his costs.

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HEESEMAN, J.*

We concur:

CROSKEY, Acting P. J.

KITCHING, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.